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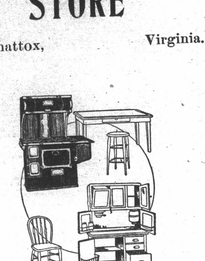

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COURT UPHOLDS PATENT SALE

U. S. Suit Against Chemical Foundation Dismissed by Judge Morris.

CONSPIRACY CHARGE FAILS

Conduct of Chemical Foundation Praised in Use of Former German Patents for Benefit of American People.

Wilmington, Del.—In a sixty-two page decision which swept away every one of the Government's major contentions as being without basis in fact or law, Federal Judge Hugh M. Morris dismissed its suit to set aside the sale of seized chemical and dye patents by the Alien Property Custodian to the Chemical Foundation, Inc.

The decision rebuked the Government for including in the bill of complaint a series of conspiracy charges unsupported, by evidence at the trial and refuted by the defense as well as by documents filed by the Government.

In declining to compel the Foundation to restore the disputed patents, numbering some 4,700 and bought for $271,000, from the Government, Judge Morris held there was no evidence to support the allegation of a conspiracy by American manufacturers to effect a monopoly through the Foundation Secretary of State; Attorney General Palmer and other high officials of that Administration.

Garvan's Course Upheld

The opinion praised Francis P. Garvan, president of the Foundation, and his trustees, as having met the most severe of tests in their conduct of the Foundation—"the test of actual trial." They were declared by the court to afford, through their high integrity and unquestioned patriotism, a thorough assurance of loyalty to their trust. "It has kept the faith," said the court of the Foundation's work.

Judge Morris found without merit the Government's contention that the criminal laws were violated in that Mr. Garvan, as Alien Property Custodian and thereby a public trustee, sold to himself as president of the Foundation the patents in question. He had acted by direction of President Wilson and his acts, supervised by the President under the latter's wide war powers granted by Congress, could not be brought to court. Congress had not delegated legislative powers to President Wilson, so maintained by the plaintiff, and the courts could not pass judgment on the wisdom or lack of wisdom of Presidential war acts.

Judge Morris recited that although Colonel Thomas H. Miller, present Custodian, who had approved two of the sales involved, vertified the conduct of the plaintiff, he admitted that he could not enumerate any of the facts alleged to have been withheld and suppressed from him.

"In view of this testimony and the obvious fact that the power to charge persons with fraud and conspiracy is a weapon with which serious irremedial injury may be done to innocent persons if such charges are lightly made, it is difficult to understand why the specific charges to which the foregoing testimony relates were formulated," wrote the court. "Yet the record makes clear that they were equally lacking in evidential support. In fact, at the argument, the plaintiff seemed no longer to press these charges against the persons alleged to be co-conspirators, but it sought to have the charges sustained as against the officers of the Government who formulated and carried out in the public interest the plan of sale. . . . While I know of no case where by implication of law the duty of clearing itself from imputed fraud rests upon the defendant, yet the defendant has met even this burden."

Holds Wilson Had Full Power

While the Trading With the Enemy Act at first merely authorized custodianship of German properties in this country, it was later amended, recalled the Court, to give power of sale under such conditions as the President, in the public interest, should determine upon. Its effect, this made the President, as agent of the nation, possessed of powers as broad as though he were absolute owner of the seized properties. Under the provisions of the act, the President was empowered to make any conditions of sale he considered necessary in the circumstances.

"The sales in dispute were not made by the Custodian in his capacity as a common-law trustee, but under the extraordinary powers devolving upon him as the President's representative, under the additional sections of the act. "Because a trustee with only the usual powers may not ordinarily sell trust property at private sale for less than its fair monetary value, it by no means follows that the Custodian, acting under supervision and direction of the President, may not do so," held the Court. "Obviously, the primary purpose of the act was the protection of the nation, not the benefit of the nation—a public, not a private trust. The statute requires the President to consider the public interest. Public interest is not a synonym for money."

In the relation Judge Morris quoted from President Coolidge's message to Congress on the Muscle Shoals problem, that "while the price is an important element, there is another consideration even more compelling. . . . If this main object (low-priced nitrates for farmers in peace and the Government in war) is accomplished, the amount of money received for the property is not a primary or major consideration."

Referring to German-owned properties, the court said:

"Much of this property was not innocently held or held solely for trade and commerce. Information acquired, by German-owned companies had been transmitted to Berlin, and there indexed and made available to German competitors and the German Government. The files of one company were filled not with business papers, but with pan-German literature. It was a distribution centre for propaganda in this country."

Upholds Confiscation of Patents

Judge Morris pointed out that when America entered the war she adhered to the International conventions forbidding poison gas, "but it soon became apparent that America would be fighting on disastrously unequal terms unless she should make use of all the dread weapons being used against her by the foe. When Germany persisted in her attempts to destroy her opponents with poison gas in contravention of all international agreements, she made it manifest that America's future safety lay in America's chemical independence. The amendment to the act was passed in the darkest days of the war (allowing the sale of seized properties). It was thought Paris was about to fall and the Channel ports be taken." Times were the circumstances, said the opinion, "which impelled Congress to grant the President the broad powers of almost absolute ownership. It was the intent of Congress to subordinate mere property rights to the welfare of the nation."

Of the value of the patents sold, Judge Morris held, in accordance with the testimony, that while Dr. Carl Holderman, a German, asserted the Haber patent were worth $17,000,000, the Germans, "the evidence is overwhelming that they were and are without substantial value to them or to American citizens. Had these patents been sold to Americans at public rather than private sale and only the net proceeds paid to their former enemy owners these owners would have suffered an almost total loss in the value of their property."

Praises Work of Foundation

As to allegations that the sale was not to obtain a fair value, but to promote the interests of the chemical and dye industries, the court held the transaction was in legal effect granting a subsidy to private industry, the Court commented, "this challenge to the motives of the officers making the sale is supported, I think, neither by the facts nor the law. Mr. Polk determined the public interest would be best served by a wide use of the inventions covered by the patents. If the property was sold under terms and conditions that assured its being devoted to the public use it matters not what benefits or detriment may have flowed as incidents therefrom.

"The property is in the keeping of men who have in its management no selfish interest to serve and whose devotion to the public interest has been established," continued the opinion. "No better plan for devoting the property to public use has been suggested. The plan has stood the most severe of all tests—actual trial. The defendant has kept the faith. This it has done, not only by granting licenses in furtherance of the purposes for which it was chartered, but also by its general expense, by distribution of books and pamphlets showing the national necessity for practical development of chemical science in America. It, perchance, those heretofore engaged in the industries have derived an incidental advantages from the plan, that incidental result cannot invalidate a transaction lawfully consummated in the public interest. The mere fact that it would lie against the validity of every tariff act. . . . Foreigners, who in effect to America and its citizens, not to those then engaged in chemical and dye industries."

Judge Morris ruled that if the executives entrusted by Congress with power of sale acted within the scope of that power "their acts are not subject to judicial nullification or review. Invasion by the courts to determine whether the public interest required the property be sold otherwise than under the statutory conditions prescribed and to set aside the sale should the judgment of the court be different from that of the President would be a judicial nullification not only of the President's act but also of the act of Congress conferring on the President the power to determine what the public interests required. What the public interest requires depends upon the conditions existing in the nation. Courts do not understand the 'state of the Union' and as, I suppose, every one of the Union's citizens have suffered an almost total loss in the value of their property."

Praises Work of Foundation

As to allegations that the sale was not to obtain a fair value, but to promote the interests of the chemical and dye industries, and that in